Ricky bin Adam v Pendakwa Raya & satu rayuan lagi

MAHKAMAH RAYUAN (KUALA LUMPUR) — RAYUAN JENAYAH NO S-05-60 TAHUN 1996
SHAIK DAUD, MOHD SAARI DAN ABDUL KADIR SULAIMAN HHMR
7 DISEMBER 2001

Acara Jenayah *— Penghukuman — Rompakan yang menyebabkan kematian — Hukuman penjara seumur hidup dan sebatan dikenakan — Sama ada hukuman patut diringankan*

Ricky bin Adam ('perayu pertama') dan Yunus bin Mindalanu ('perayu kedua') telah menceroboh masuk rumah pekerja-pekerja ladang untuk merompak. Kedua-dua perayu juga memaksa seorang penghuni ('Wong') untuk menghantar mereka ke ladang Lion Gumantang dan memaksa Wong berjalan bersama mereka ke dalam ladang. Ketika berjalan, perayu kedua yang sedang mengekori Wong menembak Wong di kepala dan Wong mati serta-merta di tempat kejadian. Bagi kesalahan di bawah s 5 Akta Senjata (Penalti Lebih Berat) 1971, hukuman mandatori adalah penjara seumur hidup dan sekurang-kurangnya enam kali sebatan rotan. Hakim perbicaraan telah menjatuhkan hukuman penjara seumur hidup dan sepuluh kali sebatan rotan ke atas kedua-dua orang perayu. Perayu-perayu mendesak agar hukuman ini diringankan.

Diputuskan, menolak rayuan tersebut:

(1) (oleh **Mohd Saari HMR**) Adalah diperhatikan bahawa kedua-dua perayu tidak sahaja mengambil wang dan barang-barang penghuni malah seorang penghuni telah ditembak mati. Dari perspektif undang-undang, perbuatan mereka itu amatlah kejam (lihat ms 330H).

(2) (oleh **Mohd Saari HMR**) Pada prinsipnya, mahkamah rayuan hanya boleh mengubah hukuman yang dijatuhkan oleh hakim perbicaraan jika hakim perbicaraan telah khilaf dari segi undang-undang. Walau bagaimanapun, dalam kes ini, selepas menimbang fakta kes dan hal keadaan sekeliling, mahkamah berpendapat bahawa hakim perbicaraan tidak terkhilaf dengan menjatuhkan hukuman tersebut (lihat ms 331A–B).

(3) (oleh **Abdul Kadir Sulaiman HMR**) Hukuman yang dikenakan ke atas setiap dari mereka jauh daripada melampau, dengan mengambilkira keadaan dan cara kesalahan tersebut telah dilakukan oleh kedua-dua perayu. Selain daripada perasaan gentar yang diakibatkan ke atas penghuni-penghuni rumah tersebut di mana rompakan itu berlaku, satu nyawa yang tidak bersalah telah hilang dengan tidak semena-mena. Mereka bernasib baik kerana tidak dituduh dengan kesalahan membunuh di bawah s 302 Kanun Keseksaan (lihat ms 332E).

A [**English summary**

Ricky bin Adam ('the first accused') and Yunus bin Mindalanu ('the second accused') had broken into the estate workers' house for purposes of robbery. Both had also forced an occupant ('Wong') to take them to the Lion Gumantang estate and had forced Wong to walk B with them into the estate. While walking, the second accused who was following Wong shot Wong in the head and Wong died instantly on the spot. For the offence under s 5 of the Firearms (Increased Penalties) Act 1971, the mandatory sentence was life imprisonment and at least six strokes of the rotan. The trial judge passed the sentence of life imprisonment and ten strokes of the rotan on both appellants. C The appellants had urged that the sentence be reduced.

Held, dismissing the appeal:

(1) (per **Mohd Saari JCA**) It was noted that both appellants not only took the money and belongings of the occupants but also shot D dead an occupant. From the perspective of the law, their conduct was cruel (see p 330H).

(2) (per **Mohd Saari JCA**) On principle, the appellate court may vary the sentence passed by the trial judge if the trial judge had erred in law. Nevertheless, in this case, after considering the facts E of the case and the surrounding circumstances, the court was of the view that the trial judge did not erred when passing the sentence (see p 331A–B).

(3) (per **Abdul Kadir Sulaiman JCA**) The sentence so imposed by the learned judge upon each of them was far from being F manifestly excessive, taking into consideration the circumstances and manner the offence was committed by the two appellants. Apart from the terror caused upon the occupants of the house where the robbery took place, an innocent life was lost unnecessarily. They were lucky for not being charged for the offence of murder under s 302 of the Penal Code (see p 332E).]

G

Nota-nota

Untuk kes-kes mengenai rompakan yang menyebabkan kematian, lihat 5 *Mallal's Digest* (4th Ed, 2001 Reissue) perenggan 3624.

H

Kes-kes yang dirujuk

Leong Ka Kong v PP [1976] 2 MLJ 21 (dirujuk)

I **Undang-undang yang dirujuk**

Akta Senjata (Penalti Lebih Berat) 1971 s 5
Kanun Keseksaan s 302

Appeal from: Criminal Trial No S(45)-01 of 1996 (High Court, Sandakan) A

Noraini bte Zulkifli (Timbalan Pendakwa Raya) bagi pihak responden.

Mohd Saari HMR: Selepas penghakiman lisan, YA Datuk Shaik Daud bin Md Ismail bersara. Oleh itu, dalam alasan penghakiman ini, perkataan 'kami' bermakna YA Datuk Kadir bin Sulaiman JCA dan saya. Perayu-perayu tidak diwakili oleh peguam. B

Untuk tujuan prosiding ini, Ricky bin Adam dipanggil 'perayu pertama', sementara Yunus bin Mindalanu dipanggil 'perayu kedua'.

Rayuan dibuat terhadap hukuman sahaja. Kedua perayu telah mengaku salah kepada pertuduhan pindaan seperti berikut dan didapati bersalah dan disabitkan: C

> That you both, on the 14 day of July 1995 at about 7.00 pm at the Masih Jaya Sdn Bhd Workers Quarters at Ladang Syarimo, Kinabatangan in the District of Kinabatangan, in the State of Sabah, in furtherance of a common intention, at the time of committing a scheduled offence, to wit robbery, had on each of you, a firearm to wit a home made shotgun (Bakakuk) and thereby you both have committed an offence under sections of the Firearms (Increased Penalties) Act 1971 and punishable under the same provision read together with s 34 of the Penal Code. D

Fakta kes adalah seperti berikut. Pada 14 Julai 1995, lebih kurang 7pm, dengan bersenjatakan senapang patah, perayu berdua menceroboh masuk rumah pekerja-pekerja di ladang Syarimo, Kinabatangan, Sabah untuk merompak. Semasa dalam rumah tersebut, mereka berdua memaksa penghuni-penghuni menyerah wang dan barang-barang termasuk jam tangan dan TV. E

Kemudian, mereka berdua memaksa salah seorang penghuni yang bernama Wong Teck Fui ('Wong') supaya menghantar mereka ke ladang Lion Gumantang. Setiba di pintu pagar ladang tersebut, mereka memaksa Wong berjalan bersama mereka ke dalam ladang. Sebaik sahaja Wong berjalan sejauh 1km, perayu kedua yang pada masa itu mengekori Wong, menembak Wong di kepala. Wong mati serta-merta di tempat kejadian. F G

Pada 17 Julai 1995, pihak polis berjaya memberkas perayu berdua. Pihak polis juga berjaya mendapat balik dari rumah mereka sebahagian daripada barang-barang yang dicuri. Pada hari yang sama, pihak polis menjumpai mayat Wong dalam semak di ladang Lion Gumantang apabila mereka berdua membawa anggota-anggota polis ke tempat tersebut. H

Dalam kes ini, adalah diperhatikan bahawa kedua perayu tidak sahaja mengambil wang dan barang-barang penghuni, malah seorang penghuni telah ditembak mati. Dari perspektif undang-undang, perbuatan mereka itu amatlah kejam.

Bagi kesalahan di bawah s 5 Akta Senjata (Penalti Lebih Berat) 1971, hukuman mandatori ialah penjara seumur hidup dan enam kali sebatan rotan sekurang-kurangnya. Dalam kes ini, hakim bicara telah mengenakan hukuman ke atas perayu-perayu penjara seumur hidup dan sepuluh kali I

A sebatan rotan. Dalam penghujahannya, mereka telah mendesak agar hukuman diringankan. Sehubungan dengan ini, pada prinsipnya, Mahkamah Rayuan hanya boleh mengubah hukuman yang dijatuhkan oleh hakim bicara, jika hakim bicara telah khilaf dari segi undang-undang (lihat *Leong Ka Kong v PP* [1976] 2 MLJ 21). Walau bagaimanapun dalam kes ini, selepas kami menimbangkan fakta kes dan hal keadaan sekeliling, kami B berpendapat bahawa hakim bicara tidak terkhilaf dengan menjatuhkan hukuman tersebut. Justeru itu, kami menolak rayuan dan mengekalkan hukuman.

Abdul Kadir Sulaiman JCA: These two appeals were heard together. Both the appellants were jointly charged and tried in the High Court in C Sabah and Sarawak at Sandakan on the following amended charge:

> That you both, on the fourteenth day of July 1995 at about 7pm at the Masih Jaya Sdn Bhd Workers Quarters at Ladang Syarimo, Kinabatangan, in the District of Kinabatangan, in the State of Sabah, in furtherance of a common intention, at the time of committing a scheduled offence, to wit robbery, had D on each of you, a firearm to wit a home made shotgun (Bakakuk) and thereby you both have committed an offence under s 5 of the Firearms (Increased Penalties) Act 1971 and punishable under the same provision read together with s 34 of the Penal Code.

To this amended charge, both the appellants pleaded guilty and were E accordingly convicted of the offence charged. In the High Court, one counsel was assigned to each of the appellant by the court. Upon their convictions, the two counsels did not make any plea in mitigation for the reason given that of the nature of the penalty which is a mandatory life imprisonment and a whipping of not less than six strokes upon conviction. However, both the appellants on their own prayed to the learned judge for F leniency in the sentence to be imposed. For the appellant in Criminal Appeal no S–05–60–96, he informed the court that he was 22½ years old and felt sorry for the offence for he had made a mistake. For the appellant in Criminal Appeal no S–05–61–96, he informed the court that he had no relative in Sabah as he was from the Philippines.

G According to the facts of the case as so presented by the learned Deputy to the High Court, pursuant to a plan, both the appellants went to the estate at about 2pm with the intention to rob. They brought along with them for the purpose, two homemade shotguns (Bakakuk). They took a rest at the scene for nightfall. At about 7pm, they proceeded to the workers quarters to carry out their plan. The appellant in Criminal Appeal no S–05–60–96 H wore a mask. Upon arrival at the said quarters, he immediately pointed his shotgun at the occupants in the kitchen watching television. He threatened and demanded them to hand over all their monies and valuables. Being dissatisfied with the slow pace taken by the occupants to surrender their valuables, he fired a warning shot which hit the kitchen wall. All the surrendered items which included wrist watches, telephone and television I sets, monies, a chainsaw gold bracelet and necklaces were put inside two gunny sacks. Not contented with the loot, both the appellants then demanded for a getaway vehicle and a driver. One of the occupants took his

pick up vehicle and drove them away until they reached the gate to Lion Gumantang plantation when he was asked to stop and get out of the vehicle. He was then forced to walk with them from there. After walking for about 1km into the plantation, the appellant in Criminal Appeal no S–05–61–96, who was then walking behind the other appellant and the victim, fired a shot which hit him on the head resulting in his instant death. The deceased fell and died instantly. They then fled from the scene.

Later, in the house of the appellant in Criminal Appeal no S–05–60–96 the police recovered a home made shotgun, two live bullets and a chainsaw. From the house of the other appellant, the police found, among other things, a home made shotgun, a television set, wrist watches and gold bracelets. Later, the two appellants led the police to the recovery of the body of the deceased which was among some bushes in the Lion Gumantang plantation. By then, the body was in a state of decomposition. However, it was confirmed that the injuries found on the body were consistent with that of gunshot injuries.

Having all the aforesaid matters placed before him, the learned Judge of the High Court sentenced each of the appellants to life imprisonment as mandated by law and ten strokes of whipping.

Dissatisfied with the sentence imposed, each of the appellants filed the present appeal. Before us, both the appellants merely prayed for a reduction in the sentences imposed by the learned judge. Upon the realization that both of them before us were unrepresented by counsel, however, on the law, the sentence so imposed by the learned judge upon each of them is far from being manifestly excessive, taking into consideration the circumstances and the manner the offence was committed by the two appellants. Apart from the terror caused upon the occupants of the house where the robbery took place, an innocent life was lost unnecessarily. They were lucky for not being charged for the offence of murder under s 302 of the Penal Code. In the circumstances, on 10 July 2001, when we heard the appeal, we were unanimous in dismissing the appeals of the two appellants. The decision of the learned judge was accordingly affirmed.

Rayuan tersebut ditolak.

Dilaporkan oleh Wong Ee Lynn